

MEMORANDUM OF LAW

DATE: November 20, 1985

TO: City Manager

Attn. R. David Flesh, Supervising

Economist, Financial Management Department

FROM: City Attorney

SUBJECT: Gann Limit; Exception For Certain Mandates

In order to eventually advise the City Council of the City concerning fiscal spending limitations which may be imposed by Article XIII B of the State Constitution (Gann limit), you have asked us to advise you regarding certain aspects of this constitutional provision and the financial computations in connection therewith. We have prepared a response to various questions posed by you in memoranda sent to us in September. In the interim, you have asked for additional observations concerning the "mandate" by State or Federal law or court decisions embodied

in Sections 6 and 9 of Article XIII B, in order for you to obtain information from the various City departments which will aid in computing a precise mathematical Gann limit for use in the FY 1987 budget preparation and for purposes of computing liability or credit for City pension fund contributions.

Section 6 of Article XIII B, provides as follows:

SEC. 6. Whenever the Legislature or any state agency mandates a new program or higher level of service on any local government, the state shall provide a subvention of funds to reimburse such local government for the costs of such program or increased level of service, except that the Legislature may, but need not, provide such subvention of funds for the following mandates:

(a) Legislative mandates requested by the local agency affected;

(b) Legislation defining a new crime or changing an existing definition of a crime; or

(c) Legislative mandates enacted prior to January 1, 1975, or executive orders or regulations initially implementing legislation

enacted prior to January 1, 1975.

Section 9 of Article XIII B, provides as follows:

SEC. 9. "Appropriations subject to limitation" for each entity of government shall not include:

(a) Debt service.

(b) Appropriations required for purposes of complying with mandates of the courts or the federal government which, without discretion, required an expenditure for additional services or which unavoidably make the providing of existing services more costly.

(c) Appropriations of any special district which existed on January 1, 1978, and which did not as of the 1977-78 fiscal year levy an ad valorem tax on property in excess of 12 cents per \$100 of assessed value; or the appropriations of any special district then existing or thereafter created by a vote of the people, which is totally funded by other than the proceeds of taxes.

As you can see from a reading of Section 6, the language of these constitutional mandates are substantially the same as those

reimbursement provisions which were earlier added by the State legislature (such as the so called "SB 90" Program.) As we all know, those statutes were continually amended by the legislature upon its own discretion.

In a case involving the Federal Unemployment Insurance Pro-gram, the California Appellate Courts have given us guidelines in a response to the distinctions between Section 6 and 9 of Article

XIIIB. In holding that the Federal Unemployment Insurance Pro-gram enacted by the Federal government was not a Federal mandate within the meaning of Section 9, the Court held that it was a State mandate under Section 6. *City of Sacramento v. State of California*, 156 Cal.App.3d 182, 203 Cal.Rptr. 258. Thus it is clear that the State must reimburse the City for its cost under the Federal Unemployment Tax Act, in accordance with provisions of Section 6 and that those amounts do not fall in the definition of proceeds of taxes under Section 8C.

To the best of our knowledge, this is the only program change the City was mandated to follow and it now clearly falls in the mandates of Section 6.

As to Section 9b mandates, had not compliance with the provi-sions of the Fair Labor Standards Act, as directed in *Garcia v.*

San Antonio Metropolitan Transit Authority, 83 L.Ed.2d 1016, 105

S.Ct. 1005 (1985), been at least temporarily overridden by the Congress in recent amendments to the Fair Labor Standards Act, clearly any additional costs to the City under that Act would have fallen within Section 9b.

Because of the changes in the Federal law, that day of reckoning has been postponed until November 1986. Thus it seems to us that the only relevant City expense, which might involve the Gann limit, would fall within the costs of the Federal Unemployment Insurance Program and the City should be in the process of receiving reimbursement for that.

Finally, you ask, with regard to the Gann limit computations, what if any deductions may be made with respect to the City's pension plan. Based upon our reading of *Carmen v. Alvord*, 31 Cal.3d 318, 182 Cal.Rptr. 506, we are of the view that the entire City annual retirement contribution may be validly deducted from appropriations subject to limitation pursuant to the provisions of Section 9a and 8g. In addition all lease payments made by the City to the San Diego Stadium Authority under the original lease (approximately 1.5 million per annum) and to the San Diego Planetarium Authority may also be deducted from appropriations subject to limitation pursuant to Section 9a and 8g.

It is our recommendation that at your earliest convenience we meet and re-compute the Gann limit computation and FY 1979 Gann

Base in accordance with the views that we expressed in our
October 25 memorandum.

JOHN W. WITT, City Attorney

By

C. M. Fitzpatrick

Assistant City Attorney

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